

UNITED STATES FEDERAL COMMUNICATIONS COMMISSION

In Re Applications of:)	MM Docket No. 99-153
)	
READING BROADCASTING, INC.)	File No.: BRCT-940407KF
)	
For Renewal of License of)	
Station WTVE(TV), Channel 51)	
at Reading, Pennsylvania)	
)	
and)	
)	
ADAMS COMMUNICATIONS)	File No.: BPCT-940630KG
CORPORATION)	
)	
For Construction Permit for)	
a New Television Station to)	
Operate on Channel 51,)	
Reading, Pennsylvania)	

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Before the
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Washington, D.C. 20554

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Room TWA363
FCC
445 12th Street, N.W.
Washington, D.C. 20554

Tuesday,
October 19, 1999

The parties met, pursuant to the notice of the
Judge, at 9:35 a.m.

BEFORE: HONORABLE RICHARD L. SIPPEL
Administrative Law Judge

APPEARANCES:

On behalf of Adams Communications Corp.:

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APPEARANCES: (Continued)

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P R O C E E D I N G S

(9:35 a.m.)

JUDGE SIPPEL: Good morning.

ALL: Good morning, Your Honor.

JUDGE SIPPEL: If I can make a quick call to my legal tech and see what's going on. He should have gotten -- yes, everything that you say is true and accurate, but I am concerned that he's not here and we haven't heard anything to the contrary from his office.

I'm going to go off the record for just a minute.

(Whereupon a recess was taken.)

JUDGE SIPPEL: Back on the record.

I don't have an immediate way of getting in touch with Mr. Shook's office, so we are just going to go forward.

MR. COLE: Your Honor, if I might suggest that if you -- if Mr. Hutton or Mr. Sifers have a cell phone? We could call. I didn't bring mine.

JUDGE SIPPEL: Well, the only other possibility would be to reschedule this or somehow or other I'd have to -- you know, do you want to wait 10 minutes?

We're going to go off the record.

(Whereupon a recess was taken.)

JUDGE SIPPEL: Okay, we're on the record.

His secretary assures me that Mr. Shook has -- at least his office received by e-mail a copy of notice and

1 she's in the process right now -- in the meantime, we're
2 going to have to go forward with business. It is going on
3 10 minutes of 10, and there has been a series of events here
4 that kind of caused the delay -- one being a power outage
5 apparently of some kind, but we're all set.

6 Mr. Shook's office advises that he is not going to
7 be attending this conference.

8 I only have -- I want to start first with the
9 question of the conflict. I have to resolve this thing in
10 my own mind, Mr. Cole, and I'm picking right up on where we
11 left off on Friday and your motion which you filed on
12 Friday, October the 15th, to withdraw the objection to a
13 representation by Holland & Knight.

14 As I read it in your -- by the way, does Holland &
15 Knight have anything -- Mr. Hutton, do you have anything to
16 add to this?

17 MR. HUTTON: I have a lot to add, Your Honor.

18 JUDGE SIPPEL: Okay. Well, let me say -- well,
19 first of all, let me take your appearances.

20 On behalf of Reading this morning?

21 MR. HUTTON: Thomas Hutton and Randy Sifers.

22 JUDGE SIPPEL: Okay. Good morning, gentlemen.

23 And on behalf of Bechtel, of course, Mr. Cole.

24 MR. COLE: Harry Cole.

25 JUDGE SIPPEL: And Mr. Bechtel is off --

1 MR. COLE: He's at Reading, Your Honor.

2 JUDGE SIPPEL: -- doing depositions.

3 Let me start, then, by asking Mr. Hutton if he
4 would -- I think the subject is -- it's a very important
5 subject and I'm hoping that this is going to get resolved
6 very swiftly, but it's important that -- I want to be sure
7 that am clear in my mind, what's going on here and how to
8 dispose of this.

9 Mr. Hutton.

10 MR. HUTTON: Thank you.

11 On Friday, October 15th, Adams and its counsel
12 falsely and maliciously charged Reading Broadcasting and its
13 counsel with a serious ethical breach. In my opinion, this
14 constitutes a grievous abuse of process, requiring the most
15 serious sanctions available under FCC rules.

16 Adams did not claim that it was investigating the
17 conflict issue. Rather, Adams stated on the record that it
18 had investigated the issue and determined that there was a
19 conflict of interest on the part of Holland & Knight, and
20 therefore they would not allow the deposition of Mr.
21 Podolsky to proceed.

22 In the course of discussing the matter, Adams used
23 the opportunity to malign the ethics of Holland & Knight,
24 claiming, in essence, that Holland & Knight was ignoring
25 ethics rules in order to pursue the almighty dollar.

1 At the same time, Adams, through Mr. Howard
2 Gilbert, one of its principals, took the opportunity to laud
3 the ethics of Adams and its counsel, even though that was
4 totally irrelevant to the issue.

5 Although Adams has now retracted its conflict
6 claim, the explanation provided by Adams shows that Adams
7 completely failed to determine any factual or legal basis
8 for its claims before making those claims.

9 On the factual issue, Adams was not led astray by
10 a third party. Mr. Podolsky is a shareholder of Adams, so
11 Adams is responsible for his misstatements. However, even
12 Adams concedes that all it took to get the correct
13 information was a single phone call, which Adams did not
14 make until after it had unleashed its accusations.

15 Now, the facts are as follows: Holland & Knight in
16 its Florida office has represented Deer Pond Associates LP,
17 a Florida limited partnership. Mr. Podolsky is a limited
18 partner of a limited partnership that itself is a limited
19 partner in Deer Pond Associates LP.

20 JUDGE SIPPEL: Say that again. I'm sorry. I'm
21 trying to follow it and take notes.

22 MR. HUTTON: He is a limited partner of a limited
23 partnership that itself is a limited partner in Deer Pond
24 Associates LP.

25 JUDGE SIPPEL: So he's like three limited

1 partnerships removed from the entity?

2 MR. HUTTON: Two -- two removed.

3 JUDGE SIPPEL: Two removed. Okay. Now, it's a
4 limited partnership, and he is a limited partner or a
5 general partner?

6 MR. HUTTON: Limited partner.

7 JUDGE SIPPEL: Go ahead.

8 MR. HUTTON: Now, even a cursory analysis of the
9 D.C. ethics rules shows that Adams's charge of a conflict
10 was baseless, even if Mr. Podolsky had been correct in
11 saying that he was a general partner of the entity.

12 Comment 13 to Rule 1.7 of the D.C. ethics rules
13 states as follows: "As is provided under Rule 1.13, the
14 lawyer who represents a corporation, partnership, trade
15 association or other organization-type client is deemed to
16 represent that specific entity and not its shareholders,
17 owners, partners, members or other constituents. Thus, for
18 purposes of interpreting this rule, the specific entity
19 represented by the lawyer is the client. Ordinarily that
20 client's affiliates, parents and subsidiaries, other
21 stockholders and owners, partners, members, et cetera are
22 not considered to be clients of the lawyer. Generally, the
23 lawyer for a corporation is not prohibited by legal ethics
24 principles from representing the corporation in a manner in
25 which the corporation's stockholders or other constituents

1 are adverse to the corporation. (See D.C. Bar Legal Ethics
2 Committee Opinion No. 216.)

3 "A fortiori and consistent with the principle
4 reflected in Rule 1.13, the lawyer for an organization
5 normally should not be precluded from representing an
6 unrelated client whose interests are adverse to the
7 interests of an affiliate, e.g., parent or subsidiary,
8 stockholders and owners, partners, members, et cetera of
9 that organization, in a matter that is separate from and not
10 substantially related to the matter on which the lawyer
11 represents the organization."

12 That's exactly the situation we have here. This
13 case is unrelated to the work done in Florida by the Holland
14 & Knight real estate lawyers.

15 Now, Adams's conduct on this matter is consistent
16 with their strategy of smearing their opponent's name and
17 reputation, character assassination, and claims of guilt by
18 association. Lacking a case on the merits, they have
19 embarked on a campaign of character assassination that now
20 includes false charges directed at one of the largest law
21 firms in the country.

22 The record of this case abounds with abuses of the
23 discovery process by Adams: One, they've used their review
24 of Adams's -- of Reading's corporate minutes ostensibly for
25 legitimate discovery and now are filing motions to enlarge

1 issues, citing those minutes based on Mr. Cole's review of
2 those minutes in our offices and his notes of those minutes;
3 number two, attempting to depose Mr. Root even though they
4 know he has no personal knowledge of the renewal record of
5 WTVE; number three, using depositions ostensibly for
6 legitimate discovery, while inquiring into nonrelevant
7 matters for purposes of filing motions to enlarge issues, as
8 again reflected in the motion to enlarge issues filed
9 yesterday.

10 Adams's baseless claim of a conflict by Holland &
11 Knight has had numerous negative consequences for Reading
12 and its counsel, as well as for the public interest in
13 reaching an expeditious conclusion to this case.

14 With respect to Reading Broadcasting, Reading has
15 incurred unnecessary costs. When I am traveling on behalf
16 of a client, I bill for the time I spend out of the office.
17 And on Friday I lost a day out of the office, which was
18 unnecessary, and Reading incurred the cost of the court
19 reporter who was there on Friday on our behalf to take those
20 depositions. Those costs amount to several thousand
21 dollars.

22 These accusations have also caused unnecessary
23 problems for me personally. As a relatively new member of a
24 large law firm, my involvement with senior management of the
25 firm is fairly limited and I try to make the interaction

1 with senior management positive on all counts. However, now
2 I've been accused of misconduct in a case that will present
3 me in an unfair light to the senior management of the firm,
4 even though the charges were later retracted.

5 Number two, the overnight stay in Chicago was an
6 unnecessary imposition on my family. My wife is a full-time
7 law student, and I try to limit overnight travel as much as
8 possible.

9 Third, we had a pleading due Monday which we did
10 ultimately file, but I had instructed Mr. Sifers to stop
11 work on the pleading because the case had been suspended,
12 and he and I then had to come in over the weekend to
13 complete the work on the pleading.

14 And more importantly, I think, for purposes of the
15 public interest in resolving this case expeditiously,
16 Adams's maneuver threw this case into disarray and it very
17 probably will require rescheduling of the case to allow more
18 time for these suspended depositions to go forward.

19 I am planning to file a pleading addressing these
20 matters, but I'm going to -- I want you to take full notice
21 that I am gravely concerned about what Adams has done.

22 JUDGE SIPPEL: I hear you. I will await your
23 pleading. I thought that -- I mean, I'm a little bit
24 concerned that you felt constrained to be working on that
25 document, that responsive document, over the weekend because

1 I thought I had indicated on the record on Friday that your
2 obligations with respect to the minutes and an opposing
3 pleading would be put in abeyance until we had a chance at
4 least to address this issue, hopefully, I thought it would
5 be yesterday. I mean, I'm sorry to hear that you -- it's
6 commendable that you take your responsibility that
7 seriously, and I was going to ask how soon I could get this
8 material today anyway, but --

9 MR. HUTTON: Well, Your Honor.

10 JUDGE SIPPEL: -- I don't want to be -- I don't
11 want any inference that I was not aware of what -- you know,
12 I certainly was aware of what was happening. I was very
13 concerned about what was happening, and I was doing the best
14 I could on a telephone call that was being recorded, to call
15 the shots as I saw them, at least between Friday and Monday.
16 So I just want -- I just want the record to be clear that I
17 have taken this very seriously and I have tried to act very
18 responsibly on it as well, not that you have accused me
19 otherwise, but --

20 MR. HUTTON: No, Your Honor. I'm sorry if I gave
21 that inference.

22 JUDGE SIPPEL: No.

23 MR. HUTTON: The reality is that because of the
24 depositions taking place starting tomorrow and because of
25 the closing for another client that I had scheduled

1 yesterday, my time was too squeezed anyway to put it off
2 later in the week. So I understood your ruling on the
3 procedural schedule, but I felt that once Adams had made the
4 conflict charge moot, that I felt I needed to proceed and
5 get the pleading on file.

6 JUDGE SIPPEL: All right. Well, as I say, I
7 commend your efforts and energies and, you know, it is
8 unfortunate that weekends have to be disrupted by something
9 that just didn't have to happen.

10 But let's move on because I want to first, of
11 course, have Mr. Cole respond to this to the extent that you
12 wish to at this time.

13 MR. COLE: Thank you, Your Honor, just briefly.

14 Again, I regret that Mr. Hutton is as exercised as
15 he is. I have tried at all points in the process to act as
16 responsibly and professionally as possible and I believe I
17 stated in the withdrawal motion, the notification of
18 withdrawal of objection, the circumstances, but let me just
19 recap them, so we're all clear, right now.

20 I met with the principals of Adams --

21 JUDGE SIPPEL: Now, this is your pleading you're
22 reviewing that was filed on October the --

23 MR. COLE: Fifteenth.

24 JUDGE SIPPEL: The 15th.

25 MR. COLE: Right.

1 JUDGE SIPPEL: It was filed on Friday?

2 MR. COLE: Yes. I'll tell you --

3 JUDGE SIPPEL: Served on Friday and filed on
4 Friday?

5 MR. COLE: I believe it was served by fax on
6 Friday to all parties, including Your Honor, and also --
7 I'll tell you what happened, if I can just do the chronology
8 and --

9 JUDGE SIPPEL: Go ahead. Go ahead. Go ahead. Go
10 ahead.

11 MR. COLE: I met with Adams principals at
12 breakfast, eight o'clock Chicago time on Thursday, just for
13 a brief kind of --

14 JUDGE SIPPEL: Now, that's October 14th.

15 MR. COLE: This is October 14th, a preparatory
16 session. At that meeting, I met Mr. Podolsky for the first
17 time. As we sat down at breakfast, he mentioned that he
18 just -- he mentioned that Holland & Knight also represented
19 him -- elsewhere.

20 JUDGE SIPPEL: You know, let me just ask a
21 question here. When you've got a case like this, you're
22 representing a series of principals, you know, out of town
23 that you're just meeting for the first time, isn't it -- as
24 a matter of course, wouldn't they be told immediately as to
25 who the lawyer on the other side is going to be?

1 I mean, these are very -- these are very energetic
2 business people, it seems to me.

3 MR. COLE: Yes, Your Honor. Well, I have not
4 interfaced with the arrangement or the way -- as a practical
5 matter I interact with Adams as I interact with Mr. Gilbert,
6 who is kind of the chief executive in terms of interfacing
7 with counsel in Washington, and he then communicates with
8 the principals out there. So when I --

9 JUDGE SIPPEL: Well, he -- go ahead.

10 MR. COLE: When I sat down with them and Mr.
11 Podolsky mentioned -- apparently prior to my arrival at that
12 meeting he had -- he, Mr. Podolsky, had learned that Holland
13 & Knight is on the other side of the case. I do not know
14 when he learned that Holland & Knight was on the other side
15 of the case.

16 JUDGE SIPPEL: Well, Mr. Gilbert, Mr. Gilbert
17 certainly was holding himself out as having quite a bit of
18 expertise --

19 MR. COLE: Yes.

20 JUDGE SIPPEL: -- on conflicts.

21 MR. COLE: Yes.

22 JUDGE SIPPEL: Did he do nothing to communicate to
23 his fellow partners what -- that, "Hey, Holland & Knight is
24 now going to be the firm. Does anybody have a problem?"

25 MR. COLE: That I don't know, Your Honor.

1 MR. HUTTON: Your Honor, I'd also like to note
2 that Mr. Podolsky had received a notice of deposition from
3 our law firm, naming our law firm as the firm that would be
4 deposing him, several weeks ago.

5 MR. COLE: Well, Your Honor, Mr. Podolsky himself
6 is not an attorney.

7 JUDGE SIPPEL: I understand that. I understand
8 that. But I was getting -- I was getting advice, argument
9 and -- oh, I'll just leave it as a Tyson argument
10 strenuously over the phone on Friday by people who seem to
11 know an awful lot about it, or think they did.

12 MR. COLE: That's Mr. Gilbert. Yes, yes,
13 conversation.

14 JUDGE SIPPEL: And he's one of the partners,
15 right?

16 MR. COLE: He's a principal, yes.

17 JUDGE SIPPEL: He's a principal. And principals
18 generally talk to one another, particularly in an investment
19 of this size, I would assume.

20 MR. COLE: Yes. I believe that's correct, Your
21 Honor.

22 JUDGE SIPPEL: Does he know Mr. Podolsky pretty
23 well?

24 MR. COLE: Yes, he does. Yes, he does.

25 JUDGE SIPPEL: All right. Well, I'm just trying

1 to get --

2 MR. COLE: In any event --

3 JUDGE SIPPEL: -- I'm trying to get the facts
4 here.

5 MR. COLE: I understand. In any event, when Mr.
6 Podolsky mentioned that, I raised my eyebrows and tried to
7 inquire about it during the course of the conversation. I
8 would estimate about 10 minutes into the general
9 conversation -- there were a number of people in the room --
10 the telephone rang in the meeting room where we were, and
11 Mr. Podolsky was called to the phone. And he came back and
12 advised us that his wife, who has been intensive care
13 because of infectious complications arising from cancer
14 treatment and she's been in intensive care for 27 days, 28
15 days, had started bleeding. And Mr. Podolsky, I can state
16 for the record, I saw him in tears and he had to excuse
17 himself and left the room, and had to go visit, be with his
18 wife in intensive care, and he was therefore unavailable to
19 me for the rest of the day as I did the depositions.

20 I understand that Mr. Gilbert somehow got in touch
21 with him during the evening of Thursday and made sure that
22 he would be available for a nine o'clock deposition. We
23 anticipated at that point the depositions would go forward.

24 I met with Mr. Gilbert at seven o'clock for
25 breakfast on Friday morning, and asked him what he knew

1 about the conflict, about the representation of Holland &
2 Knight. He said he did not have any direct information
3 about it, but he did know that Mr. Podolsky is a very
4 active -- very active in real estate matters, has a number
5 of companies, both in his own name and in family names, and
6 various limited partnerships and so forth; and that he, Mr.
7 Gilbert, thought it would be a good idea at least to take
8 Mr. Podolsky aside before the deposition and find out what
9 we could about the facts in order to, you know, decide
10 whether or not there was a basis for a conflict or an
11 assertion of a conflict.

12 After breakfast, before the deposition, I
13 contacted -- I went to my hotel room and contacted Mr.
14 Bechtel just to get his view on the matter. I reviewed what
15 I knew at that point, which was that there was at least a
16 possibility or an apparent conflict between -- involving
17 Holland & Knight and Mr. Podolsky, who is about to be
18 deposed at nine o'clock, and what was his recommendation.

19 He also concurred in the assessment of Mr. Gilbert
20 and me that we should at least investigate, explore, and if
21 there did appear to be a conflict, we should protect the
22 client, because the client's interests, obviously, are
23 paramount in our view.

24 Before the deposition with Mr. Hutton and the
25 court reporter waiting in the deposition room, Mr. Gilbert

1 and I interviewed Mr. Podolsky in a separate conference room
2 and asked him what -- you know, what was the nature of his -
3 - of his interest. He did identify an entity called, I
4 believe it was Deer Pond Associates, which, I think, is the
5 entity which Mr. Hutton adverted to, or Deer Pond Limited
6 Partnership, but identified himself as a general partner.
7 He also identified -- he also indicated to us that he
8 received from that partnership a significant annual income
9 in the mid six figures.

10 And based on that information of which he showed
11 no lack of confidence when he related it to us, it was Mr.
12 Gilbert's view and my view that there was at least enough
13 there for us to need to protect the client so we could find
14 out more because, as I say, we had a -- we were in the
15 middle of the deposition time. It had started running.

16 Based on that, we appeared in the deposition room,
17 got Your Honor on the phone, and that hearing session or
18 informal prehearing conference, however you want to
19 characterize it, ensued immediately.

20 JUDGE SIPPEL: And so it was on the record?

21 MR. COLE: Yes, exactly. The record -- the record
22 states what the records states.

23 JUDGE SIPPEL: You told me specifically when the
24 call came into me and I picked up the phone, that there was
25 a court reporter there that was using -- was taking down the

1 deposition and that she would transcribe the telephone call.

2 MR. COLE: That's correct. To the best of my
3 knowledge, she did that.

4 Following that conference, in light of Your
5 Honor's instruction that if I were to file a motion to
6 disqualify, that I should do it as possible and get cranking
7 on it, Mr. Gilbert and I took Mr. Podolsky back to the
8 conference room and interviewed him again in greater detail
9 to get the specific name of, you know, the entity, the
10 precise interest, and the history of his representation and
11 so forth.

12 And in the course of that -- again, Mr. Podolsky,
13 I should point out, is -- he was clearly distracted by his
14 wife's situation. He was not -- I cannot say for sure that
15 he was focusing 100 percent on what he was saying at all
16 times. And as we interviewed him further and he became less
17 certain of his precise interest at that point, we said,
18 well, let us -- you know, we cannot -- if we're going to
19 file something with Your Honor, we need to be 100 percent
20 sure. Let us contact your office and find out what we can.

21 And in the course of that conversation, we then
22 contacted his office -- this is probably within 15 - 20
23 minutes, half an hour of the close of the on-the-record
24 conference with Your Honor -- we had, you know, we had
25 information from his office which contradicted what he had

1 told us.

2 And at that point Mr. Podolsky said, well, that's
3 probably -- the information we were being given by his
4 office was, as far as he knew, true, and if he had misstated
5 to us, he was very apologetic but, you know, that's -- he'd
6 told -- he'd told us what he knew, what he thought he knew,
7 and apparently that wasn't accurate.

8 At that point I went down to the conference room
9 just to see if Mr. Hutton happened to still be there,
10 because he had indicated he wasn't sure what his plans were.
11 Mr. Hutton had left. The court reporter had left. I had no
12 way of reaching either of them. So I thought the best thing
13 for me to do would be to sit down and record all this in a
14 formal writing, which was my notification, and to get that
15 on file as soon as possible because I did not want there to
16 be any significant delay arising from what I believed to be,
17 you know, a good faith question of fact which had arisen.

18 So I sat down, and I borrowed one of their
19 computers in the law firm where we were, drafted the
20 notification, showed it to Mr. Gilbert, who confirmed that
21 it conformed with his recollection of exactly what happened.
22 I contacted my office, asked them to prepare a certificate
23 of service showing fax delivery to Your Honor, Mr. Hutton
24 and Mr. Shook, and to fax that out to us so that we could
25 take care of faxing the whole pleading from Chicago to all

1 the parties.

2 I then had a copy of the pleading with the
3 certificate of service faxed back to my office so that it
4 could be filed hard copy, formally that afternoon while I
5 was in transit back from Chicago to Washington.

6 My goal was to acknowledge that there had been a
7 mistake made, to apologize and express our regret, and to
8 take very -- make every effort I could to avoid any
9 significant delay as a result of it, and that's -- that's
10 what happened.

11 JUDGE SIPPEL: All right. Well, let me before --
12 I'm certainly going to give Mr. Hutton an opportunity to
13 respond or to make additional comment on those comments, but
14 let me ask some questions first. Maybe it will generate
15 something else that you wanted to talk about, okay?

16 These are notes that I've taken with respect to
17 your pleading. I grant it was in the fax sometime on
18 Friday, but I did not see it until yesterday morning. And
19 let me -- well, first of all, do all the principals now at
20 Adams, are they aware of the fact that Holland & Knight is
21 the counsel for Reading and that they -- and have you made
22 any assurances that there are no other people who might have
23 a conflict?

24 MR. COLE: That I do not know because I have not
25 spoken with Mr. Steinfeld, but I can confirm that this

1 afternoon, Your Honor.

2 JUDGE SIPPEL: Who is Mr. Steinfeld?

3 MR. COLE: Mr. Steinfeld is another principal, who
4 was not there on Thursday. He was en route from Israel, was
5 arriving on Friday sometime, and we were going to have to
6 reschedule him in any event. But I believe all the others
7 are aware of the Holland & Knight representation, and to the
8 best of my knowledge, there are no conflicts. But I will
9 confirm that in writing if you would like.

10 JUDGE SIPPEL: I do want, yes, I ultimately want
11 an assurance of that, that there has been at least this much
12 due diligence, that everybody who is -- all the principals
13 are on board in terms of the law firm, the name of the law
14 firm that is representing Reading, and as of what date they
15 had been representing Reading.

16 Now, was Mr. Gilbert the one -- was his deposition
17 being taken at the time that you made that phone call?

18 MR. COLE: No, his -- we had done Mr. Fickinger,
19 Mr. Umans and Mr. Gilbert on Thursday, and we were in Mr.
20 Gilbert's office. I mean, Mr. Gilbert is an attorney in
21 Chicago, and he had made one of his conference rooms
22 available for the deposition.

23 JUDGE SIPPEL: All right. So when I was talking
24 to you, there was you, there was -- of course, there was Mr.
25 Hutton, and Mr. Gilbert?

1 MR. COLE: Mr. Gilbert, yes, and that's Mr.
2 Gilbert's office, and since he had participated with me in
3 the interview of Mr. Podolsky immediately before the
4 deposition, he wanted to sit in on our hearing, or on any
5 discussion that was going to ensue about that.

6 JUDGE SIPPEL: All right. Well, I want to be -- I
7 mean, I just want to make it clear as a matter of just local
8 practice as far as cases with me are concerned, when there
9 is argument like this, I only want to talk to the lawyers
10 who are representing the case. I don't want to talk to any
11 lawyer who happens to be in the room notwithstanding how
12 much information or how much insight they may have to
13 impart. It all should be done through counsel, particularly
14 when you're on a telephone conference call. It makes it
15 very difficult on my end.

16 Now, you're satisfied that there absolutely is no
17 conflict? In other words, Mr. Podolsky -- is Mr. Podolsky
18 or will Mr. Podolsky be brought up to speed in terms of
19 precision as to exactly what's going on here?

20 MR. COLE: Yes, Your Honor.

21 JUDGE SIPPEL: So that he can make a -- in his own
22 mind, he can make a judgment that he is -- that he's
23 satisfied with the situation as it is and that he's
24 satisfied that there is no conflict.

25 MR. COLE: I believe so, Your Honor, yes.

1 JUDGE SIPPEL: Well, that has to be pinned down.
2 I mean, the record has to be clear that no matter how remote
3 his association may be with the Holland & Knight law firm,
4 that he agrees that there is no problem and that he can
5 participate free of mind with respect to the remainder of
6 this case.

7 Another question that is raised here -- this is on
8 page 3 of your, of your withdrawal motion -- "Counsel and
9 Mr. Gilbert immediately" -- "counsel," that being yourself,
10 right?

11 MR. COLE: That's correct.

12 JUDGE SIPPEL: Yourself and Mr. Gilbert
13 "immediately contacted the administrative person who
14 reviewed files and advised particular transaction at issue
15 involved" -- and this I want in quotes -- "a Podolsky family
16 partnership which did not include Mr. Podolsky as an
17 individual partner, but did include his children and his
18 parents as partners."

19 Now, I take it from that representation, it's
20 essentially -- you learned essentially that the situation is
21 as Mr. Hutton outlined it, more or less?

22 MR. COLE: I believe "more or less" is correct.
23 Again, I have not seen any documentation on this. We were
24 working over the phone with an administrative person in Mr.
25 Podolsky's office, but it appears that that's -- I have no

1 basis to disagree with Mr. Hutton's summary of the
2 situation.

3 JUDGE SIPPEL: But the administrative person gave
4 you some -- obviously, after you hung up with him, you and
5 Mr. Gilbert had an assurance that this situation was 100
6 percent opposite from what you had thought it had been --

7 MR. COLE: That's correct.

8 JUDGE SIPPEL: -- before the phone call?

9 MR. COLE: That's correct.

10 JUDGE SIPPEL: So what was it that he told you
11 that -- I mean, what are some of the key words that he used
12 to bring you around that quickly?

13 MR. COLE: Mr. Podolsky had advised Mr. Gilbert
14 and me that he, Mr. Podolsky, was a general partner --

15 JUDGE SIPPEL: Right.

16 MR. COLE: -- in the entity. The administrative
17 person told us that Mr. Podolsky himself was not a general
18 partner in the entity; that the entity consisted of a
19 variety of limited partnerships and so forth in which it was
20 not even clear Mr. Podolsky himself personally had an
21 interest, although obviously the Podolsky family members had
22 multiple interests.

23 And I can point out that, at least from what I
24 understand to be Mr. Podolsky's real estate business, he has
25 lots of these things. I mean, the fact that he might have

1 been confused about one transaction was not surprising
2 because he has a number of transactions, many of which
3 involve family members. Apparently, at least in a number of
4 which -- and I suspect many of which -- he is himself, in
5 fact, a general partner, but this was not one of them.

6 JUDGE SIPPEL: Is he -- is this the only one that
7 has to be a focus of concern with respect to Holland &
8 Knight?

9 MR. COLE: I believe so, Your Honor. Apparently
10 the law firm that had represented Mr. Podolsky's Florida
11 real estate interests since the early 1980s had merged with
12 Holland & Knight within the last 12 to 18 months, something
13 along those lines -- Mr. Hutton would have better
14 information on that -- as a result of which Mr. Podolsky had
15 become, in effect, a client of Holland & Knight through this
16 merger. And the focus of our concern was the Deer Pond
17 transaction, because that was one which had happened within
18 the last six months or thereabouts and that one was an
19 active transaction in which a Podolsky family interest --
20 and we understood Mr. Podolsky himself -- personal interest,
21 had been, you know, on the front burner at Holland & Knight.
22 And that was the focus of our concern.

23 JUDGE SIPPEL: But it is going to be necessary,
24 since he is apparently so -- and I don't mean to suggest
25 that he was at fault in terms of how he was handling the

1 situation -- that is, Mr. Podolsky with counsel at the time,
2 you know, that his wife was in serious health constraints.
3 I mean, I do understand that.

4 But I think it's going -- I'm going to have to be
5 shown with clarity that this Deer Pond Associates is the
6 only thing that has any remote relationship to the Holland &
7 Knight law firm. And the reason I say that is because
8 apparently he's got -- he's got so many that he just doesn't
9 know what his relationships are to any particular one. And
10 again, I say, I'm not saying that in terms of saying it's
11 his fault or that he should know or something like that, but
12 the record is going to have to be clear.

13 Now, in the context, however, of this remote
14 relationship with the Holland & Knight law firm or with Deer
15 Pond or with any of these other -- well, let me just leave
16 it with Deer Pond and Holland & Knight, was there any
17 disclosure of Mr. Podolsky's financial information?

18 MR. COLE: That we're not sure of, Your Honor. We
19 believe so but we -- again, we were operating from Mr.
20 Podolsky's information. He thought he had provided a
21 financial statement at some point in connection with the
22 financing arrangements, and he wasn't sure whether that had
23 gone through Holland & Knight or through his lawyers who had
24 merged with Holland & Knight. But he was sufficiently -- I
25 mean, again, I can't say for sure, we were operating kind of

1 on the fly in the sense that I was trying to gather
2 information and react to it right there on the spur of the
3 moment. But my understanding was that he believed that
4 there was at least a good chance that financial -- a
5 personal financial statement from him had been provided to
6 Holland & Knight or to his counsel who had become part of
7 Holland & Knight.

8 JUDGE SIPPEL: Now, if that were the case -- I
9 mean, we'll find out for sure, but that information in all
10 likelihood would have stayed with the Florida firm that was
11 focused on the Florida situation. That's what we would
12 expect would happen. The Florida firm, even though it
13 becomes Holland & Knight through merger --

14 MR. COLE: Well, there, Your Honor, I suspect that
15 if it's part of Holland & Knight's overall operation, if
16 it's in their files, it's available to anybody in Holland &
17 Knight.

18 JUDGE SIPPEL: Oh, I understand its availability.
19 I'm just saying, in terms of a practice, as a practical
20 matter, that's where it would have gone, and that's where it
21 would be.

22 MR. COLE: Where would the piece of paper -- the
23 piece of paper itself, I would suspect, would be in -- would
24 stay in Florida, but I don't know. I have no information
25 about how Holland & Knight maintains its files.

1 JUDGE SIPPEL: Now, if that's the case, if they do
2 have financial information as a matter of course being given
3 by investors and a copy of that is somehow or other floating
4 around down at Holland & Knight, the Florida firm office,
5 does that give you any concern as far as conflict is
6 concerned?

7 MR. COLE: Well, that was -- that was one of the
8 bases for raising the question on Friday, and I believe I
9 stated that on the record during our conference on Friday;
10 that, you know, we are concerned, obviously, that if there
11 is information about Mr. Podolsky that's otherwise not
12 available to them, we would not like it to be made available
13 to them, to Reading Broadcasting, through the happenstance
14 of a common law firm.

15 JUDGE SIPPEL: Okay. Look, you don't have -- that
16 particular fact would not -- would that affect -- well, let
17 me phrase the question this way. You filed a notification
18 of withdrawal.

19 MR. COLE: Yes.

20 JUDGE SIPPEL: That additional information, unless
21 it turned out to be obviously something that was focused
22 differently than what I'm talking about, would not impact
23 your notice of withdrawal.

24 MR. COLE: No, it would not, Your Honor.

25 JUDGE SIPPEL: Okay. Yes, you say, in paragraph

1 six, that in view of this more definite information which
2 appears to eliminate the conflict about which Adams was
3 concerned, anyway that "appears" -- that sentence struck me
4 as being that you weren't -- you weren't 100 percent sure.
5 And I just wanted to -- I flagged that for myself to just
6 ask you if this is -- if these four pages of your pleading,
7 is that the sum and substance of what it is that you know at
8 this time, or at least that you knew --

9 MR. COLE: That's correct, Your Honor, yes. And I
10 filed this, or I signed off on this, literally picked up my
11 bags and left Mr. Gilbert's office to go to Midway Airport
12 and to fly home, and I have not -- I have had no contact
13 with Mr. Podolsky since then. I was tied up on other
14 matters yesterday, and I know nothing more about this than
15 what is said here.

16 JUDGE SIPPEL: And you understand that I do have a
17 responsibility or at least I feel I do have a responsibility
18 to at least have enough information with respect to this to
19 make a defined decision that this is not a problem.

20 MR. COLE: Your Honor, I appreciate that, and
21 it's -- I mean, that's largely the situation in which I
22 found myself Friday morning, and that is, I needed more
23 information and I was concerned that if we allowed the
24 deposition to commence, I might be deemed to have waived any
25 claim of conflict since I had knowledge that there was at

1 least a potential conflict before the start of the
2 deposition. I didn't feel it was appropriate for me to
3 start the deposition until I had an opportunity to at least
4 raise the question and, ideally, gather more facts. And
5 that's what I've done.

6 JUDGE SIPPEL: Well, I want you to understand that
7 my questions -- and I know you do understand this, but I
8 want to be sure you understand this -- that my questions and
9 my pointed questions this morning are not -- there is
10 nothing, there is nothing personal intended in terms of
11 trying to embarrass counsel or anything. I'm trying to find
12 out exactly what the situation is, and that applies to Mr.
13 Gilbert as well, although my ruling with respect to one
14 lawyer speaking for one party stands.

15 Now, I understand that there is going to be a
16 pleading, so I'm sure I'm going to see more information
17 about this in a more refined form than I am hearing it now,
18 but I want to ask you, Mr. Hutton, do you want to respond to
19 anything that's gone between myself and Mr. Cole here?

20 MR. HUTTON: Just a few items, Your Honor.

21 Number one, you asked if Mr. Gilbert's deposition
22 was done, and I would note that Mr. Cole had raised certain
23 objections to certain questions in the course of that
24 deposition on Thursday afternoon. You were not available
25 for a ruling on those, and I would hope we could address

1 that this morning.

2 Number two, I'm happy to state for the record that
3 the Deer Pond files have never been reviewed by me or anyone
4 else working on this Reading Broadcasting case, and will not
5 be reviewed by any of us during the pendency of this case.

6 Number three, again, I want to make it clear that
7 Mr. Cole on Friday morning did not claim the need for more
8 time to investigate the issue. If he had wanted more time
9 to investigate the issue, our schedule would have permitted
10 more time because the deposition of Mr. Haag was not
11 scheduled to start until 11 o'clock, and we hadn't expected
12 Mr. Podolsky's deposition to last more than half an hour or
13 45 minutes. So if Mr. Cole had wanted more time to check
14 out his facts before unleashing his accusations, that
15 certainly would have been possible. He didn't ask for more
16 time. He just leashed out with his accusations.

17 And the final point I want to make again is that
18 even if Mr. Podolsky's factual assertions had been correct,
19 there is no question under paragraph 13 of the comments to
20 the conflict rule that we would not have been deemed to
21 represent Mr. Podolsky, even if he had been a general
22 partner of Deer Pond, and -- because the cases are
23 unconnected, there would not have been a conflict.

24 JUDGE SIPPEL: Okay, I hear you. As I say, I'm
25 reserving -- I'm reserving any ultimate resolution or

1 determination on this whole situation with respect to
2 Podolsky until I see more papers on it, except insofar as
3 I've indicated to Mr. Cole what my concerns are, such as
4 that all the other partners have had a chance to be informed
5 as to who is representing Reading so that this doesn't come
6 back up again with any other partner.

7 I also have a -- as I say, I'm sure that this is
8 going to be done in terms of -- there will be a pleading
9 from yourself on this, as you indicated, Mr. Hutton, and
10 then there will be a response, and if the rules provide,
11 there will be a reply pleading. But my general instructions
12 on this are that reply pleadings are only to be filed if the
13 rules provide for it, unless I ask for it. Obviously, if I
14 ask for a reply, I'd expect to receive one.

15 One thing I want to be sure -- I told you -- well,
16 I've already told Mr. Cole about what I want from Mr.
17 Podolsky --

18 MR. COLE: Uh-huh.

19 JUDGE SIPPEL: -- a written assurance that he's
20 substantially aware of everything that we're -- of how this
21 situation arose and that he's perfectly satisfied to
22 continue to go forward even if the firm is in the case, the
23 Howard & Knight firm is in the case.

24 There should be something in writing in the form
25 of an affidavit from this administrative assistant, this

1 administrative person.

2 Who is this administrative person? Do we have a
3 name for her?

4 MR. COLE: I don't know who it is. Mr. Gilbert
5 was on the phone while I was talking to Mr. Podolsky.

6 JUDGE SIPPEL: Okay. Do you have that -- do you
7 want that information at this point? Does this make a
8 difference to you in terms of your inquiries?

9 MR. HUTTON: The name of the person?

10 JUDGE SIPPEL: Yes, the administrative assistant?

11 MR. HUTTON: I think I have her name and phone
12 number in my records.

13 JUDGE SIPPEL: All right. That's why I was asking
14 that question. I want to be sure that everybody is on
15 target. But I do want something -- ultimately, whether it's
16 an attachment to a pleading or -- you know, this doesn't
17 have to be done tomorrow obviously, but at an appropriate
18 point I want something in writing from this person in
19 affidavit form as to what -- as to what Mr. Podolsky's
20 situation is vis-à-vis that Deer Pond arrangement.

21 Again, this will come forward, I'm sure, in your
22 motion papers, Mr. Hutton, but I do expect to see something
23 in writing that -- I mean, just confirming what it is that
24 you've already told me three times, that the law firm has
25 been aware of this, analyzed it at the time or addressed the

1 situation at the time that you were retained, your firm was
2 retained, and that there is absolutely no conflict to be
3 concerned about.

4 And the reason I'm doing all of this is because I
5 just want to be sure that all persons involved -- and it's
6 clear on the record and that I can -- that I can make a
7 determination when hopefully this is going to just be --
8 well, when I make my appropriate rulings on this matter in
9 the general context, no matter what it is, whether it's in
10 the form of a motion or whether it's just a form of an order
11 that I ultimately issue to bring the issue together and
12 resolve it for my purposes, I want to be sure that I have
13 all of the bases checked as far as all of the parties are
14 concerned, and that would include Holland & Knight, Mr.
15 Podolsky, this administrative person and yourself, Mr. Cole,
16 to the extent that you feel that that's necessary and it's
17 in your interest.

18 That's all that I have with respect to this and
19 I'm just going to wait until I see the next paperwork on it.

20 All right, you've mentioned -- you did raise it,
21 it's appropriate at this time, Mr. Hutton. Do you want to
22 go into the Gilbert deposition questions? Will you raise
23 that now?

24 MR. HUTTON: Sure.

25 JUDGE SIPPEL: Go ahead.

1 MR. HUTTON: During his deposition, Mr. Gilbert
2 testified that he had been a principal of Monroe
3 Communications which was an applicant for a television
4 station permit filed in competition against a renewal
5 application of a television station in Chicago. The Monroe
6 application was filed in the early 1980s and was resolved at
7 the end of 1992 through a settlement filed and approved by
8 the FCC. Pursuant to the terms of that settlement, Monroe
9 Communications received a sum of money in excess of \$17
10 million in connection with that settlement.

11 During the course of the case, Monroe
12 Communications had made various representations about
13 constructing the station and how they would operate the
14 station, how they would program the station. The settlement
15 took place after Monroe had actually won the case on the
16 merits. The case had been up to the Court of Appeals twice.
17 The ultimate disposition of the case was to award the permit
18 to Monroe. They then reached a settlement, before that
19 decision became final, to receive the \$17 million plus.

20 I asked questions at the deposition of Mr. Gilbert
21 as to whether or not the law firm representing Monroe
22 Communications, which was Bechtel & Cole, had been on a
23 contingent fee arrangement, and I also asked if Bechtel &
24 Cole in this case had a contingent fee arrangement with
25 Adams Communications.

1 And I asked those questions because I think it's
2 relevant to find out if Adams's intent to construct the
3 station here is a bona fide intent or whether or not they
4 are interested in arriving at a settlement similar to what
5 they did in Chicago. And the underlying fee arrangements
6 with counsel may help me decipher what the intent of Adams
7 is, and that's why I asked for the information, and that's
8 why I think it's -- why Mr. Gilbert should be required to
9 answer those questions and followup questions, and in all
10 likelihood, production of copies of the fee arrangements.

11 JUDGE SIPPEL: Okay. Mr. Cole, what is Adams's
12 position on that?

13 MR. COLE: Adams's position is that the fee
14 arrangements have nothing to do with anything. Whatever fee
15 arrangements may exist between an attorney and client are
16 completely irrelevant to anything and are not even likely to
17 lead to the discovery of any admissible evidence about any
18 issue in this case. It's a private -- a private contractual
19 matter between parties that does not reflect at all on any
20 aspect of this case.

21 JUDGE SIPPEL: What about the -- now, is there any
22 question, is there any objection, opposition to this on the
23 basis of privilege, or are we simply on relevancy here?

24 MR. COLE: Oh, no. Obviously, any communications
25 that may exist in terms of documents would be covered by

1 privilege, as well as any specific communications between
2 attorney and client.

3 JUDGE SIPPEL: Now, that's not -- fee amounts are
4 generally excluded from that, isn't that correct? I'm the
5 only horse back here but, as a general proposition, the fees
6 themselves are not protected as a matter of course. It may
7 be in a situation, certain situations.

8 MR. COLE: Under -- you mean as confidential
9 communications?

10 JUDGE SIPPEL: That's correct.

11 MR. COLE: I believe that's correct, Your Honor,
12 but I would be reluctant to commit to that 100 percent
13 without doing some research.

14 JUDGE SIPPEL: So if I were to -- if we were going
15 to get into this, if he was going to get into this in
16 deposition, it would have to go through a ruling on
17 privilege anyway. Isn't that right?

18 MR. COLE: Yes, sir.

19 JUDGE SIPPEL: I'm not inviting that, but I'm
20 assuming that.

21 So what would be your position with respect to
22 privilege on that, Mr. Hutton?

23 MR. HUTTON: Your Honor, the attorney/client
24 privilege protects confidential communications from the
25 client to the lawyer, and a retainer letter is not going to

1 reflect such confidential communications. The retainer
2 letter is just going to reveal the financial relationship
3 between the two parties.

4 JUDGE SIPPEL: Well, I know what your answer is
5 going to be: "That's not necessarily true."

6 MR. COLE: What is my answer going to be, Your
7 Honor?

8 (Laughter.)

9 JUDGE SIPPEL: You don't necessarily agree with
10 that.

11 MR. COLE: No, I certainly don't agree with that,
12 and also, it seems to me, Mr. Hutton is putting himself in
13 the hole that if the retainer letter addresses only
14 financial figures, then how can that possibly be
15 illustrative or probative of anything?

16 JUDGE SIPPEL: Well, he didn't say that. I said
17 it. I was trying to just refresh my recollection of how the
18 privilege has been applied with respect to legal fees, and I
19 know the cases -- well, what I know is irrelevant right now.

20 Here is what I'm going to require. I'm going to
21 require a briefing scheduled on this. I've got to see the
22 issue briefed. There should be cases someplace on point
23 with respect to legal fees, contingency fees and the
24 documents that incorporate the agreement under work product
25 and privilege. And if it turns out that these are not

1 privileged, I will permit the questions. If they are
2 privileged, then that's the end of the discussion.

3 Now, when -- I know everybody is so busy, but when
4 is it that -- and I think it's safe to assume I will do
5 something to adjust these procedural dates. I mean, I think
6 I'm going to have to do something to adjust these procedural
7 dates unless you, you know, you want to convince me
8 otherwise, Mr. Hutton. I'm going to wait until I hear from
9 you.

10 MR. HUTTON: Your Honor, I'll state briefly my
11 position on that point.

12 JUDGE SIPPEL: Yes, why don't we? We might just
13 as well. I mean, you know what my thinking is, but I can be
14 convinced otherwise --

15 MR. HUTTON: All right.

16 JUDGE SIPPEL: -- if you've got a convincing
17 argument.

18 MR. HUTTON: My point would be that the time has
19 come for you to really take control of this case. I think
20 the case is spiraling out of control, as evidenced by the
21 pleadings filed yesterday by Bechtel & Cole.

22 Bechtel & Cole and their client, Adams
23 Communications, lacking a case on the merits, are engaged in
24 a campaign of character assassination and guilt by
25 association that I've never seen before. And I think their